

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

SHOSHANA HEBSHI,)	
)	
Plaintiff,)	
)	
v.)	Case No. 13-10253
)	
UNITED STATES OF AMERICA, et)	Honorable Terrence G. Berg
al.,)	Magistrate Judge Laurie J. Michelson
)	(Settlement)
Defendants.)	
)	
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**PLAINTIFF’S MOTION TO COMPEL A REPRESENTATIVE OF
FRONTIER AIRLINES, INC. WITH FULL AND COMPLETE
AUTHORITY TO SETTLE TO ATTEND THE NOVEMBER 5, 2014
SETTLEMENT CONFERENCE**

Plaintiff respectfully moves this Court for an order, pursuant to Rule 16 of the Federal Rules of Civil Procedure, compelling Defendant Frontier Airlines, Inc. (“Frontier”) to attend the settlement conference scheduled for November 5, 2014 with a representative who has full and complete authority to approve all terms of a settlement agreement. Plaintiff relies on the attached Brief in support of her motion.

In accordance with Rule 7.1(a) of the Local Rules of the Eastern District of Michigan, Plaintiff's counsel certifies that they attempted to obtain concurrence in the relief sought, and counsel for Defendant Frontier declined to concur.

Respectfully submitted,

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Dated: October 27, 2014

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UNITED STATES OF AMERICA, et)	Honorable Terrence G. Berg
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_____)	

**BRIEF IN SUPPORT OF PLAINTIFF’S MOTION TO COMPEL A
REPRESENTATIVE OF FRONTIER AIRLINES, INC. WITH FULL AND
COMPLETE AUTHORITY TO SETTLE TO ATTEND THE NOVEMBER
5, 2014 SETTLEMENT CONFERENCE**

ISSUE PRESENTED

Is an Order compelling Defendant Frontier Airlines, Inc. to attend the upcoming settlement conference with a representative having full and complete authority to make settlement decisions warranted?

Answer: Yes.

CONTROLLING AUTHORITY

1. Fed. R. Civ. P. 16(a)(5).
2. Fed. R. Civ. P. 16(c)(1).
3. Fed. R. Civ. P. 16(c)(2).

INTRODUCTION

At the close of the last settlement conference in this matter, held on September 16, 2014, the Court scheduled another conference for November 5, 2014, at which the parties will discuss the non-monetary terms of a settlement agreement. This upcoming settlement conference cannot be productive unless all parties attend with a representative who has full and complete authority to make *all* settlement decisions, including, on the part of Defendant Frontier Airlines, Inc. (“Frontier”), a representative with authority to agree to changes to Frontier’s policies, practices, and training. Plaintiff’s counsel have attempted, by letter, e-mail, and telephone, and over the course of more than two weeks, to obtain written assurance from Defendant Frontier’s counsel that Frontier will send such a representative on November 5, 2014. However, Plaintiff’s counsel has not succeeded in securing a written assurance to that effect, and Plaintiff therefore seeks this Court’s assistance.

FACTS AND PROCEDURAL BACKGROUND

After Plaintiff Shoshana Hebshi was pulled off an airplane at gunpoint, handcuffed, detained for four hours, and strip-searched before being released without charge, she filed this civil rights lawsuit, seeking to vindicate her rights and to protect future airline passengers from similar treatment. (Compl., Jan. 22, 2013, ECF No. 1.) The complaint named as Defendants Frontier, the United

States, a number of individual federal officials, and a number of individual employees of the Wayne County Airport Authority. The parties expressed interest in discussing settlement at the initial Case Management Status and Scheduling Conference on June 5, 2013, and Judge Berg referred the matter to Magistrate Judge Michelson for mediation on July 3, 2014 (Order of Reference to U.S. Magistrate Judge, July 3, 2013, ECF No. 79). On July 15, 2013, Judge Michelson noticed an initial settlement conference for August 6, 2013, expressly ordering that it “be attended by an authorized representative of each party with full and complete authority to make settlement decisions, together with trial counsel for each party.” (Notice of Settlement Conference, July 15, 2013, ECF No. 83.) Starting at that initial conference, Ms. Hebshi made clear that she would seek changes to Frontier’s policies, practices, and training as part of a settlement agreement. After a total of three settlement conferences during the second half of 2013, and despite the Court’s significant efforts, the parties were unable to resolve the matter.

Several months ago, the parties indicated to Judge Berg that they were again ready to discuss settlement, and Judge Berg again referred the matter to now-District Judge Michelson on September 2, 2014. (Order of Reference to U.S. Magistrate Judge, Sept. 2, 2014, ECF No. 130.) Prior to the most recent settlement conference on September 16, 2014, Judge Michelson held a telephonic status conference during which the parties and Judge Michelson agreed that the

September 16 conference would address solely the monetary terms of a settlement. Thus, for that conference, Defendant Frontier's obligation to send a representative with settlement authority could be satisfied by the attendance of an insurance representative.

At the close of the September 16 conference, Judge Michelson scheduled another settlement conference for November 5, 2014. Because the discussion at this conference will address the non-monetary terms of a resolution, Plaintiff's counsel understand that attendance by a fully authorized representative of Frontier, rather than only an insurance representative, is necessary. On October 10, 2014, Plaintiff's counsel sent Frontier's counsel a letter seeking written assurance that Frontier would attend the upcoming conference with such a representative. Despite repeated follow-up by telephone and e-mail, Plaintiff's counsel have been unable to secure a written assurance to that effect.¹

¹ During a telephone call on October 24, 2014, Brian Maye, counsel for Frontier, indicated that Frontier's General Counsel would be the appropriate authorized representative, but that he would not attend the November 5 conference in person. Mr. Maye indicated that the General Counsel would be available to participate in the conference telephonically, but Mr. Maye did not provide any written assurance to that effect, as requested once again by Plaintiff's counsel. While it is the Court's prerogative to decide whether a telephonic appearance by Frontier's representative will comply with its previous orders, Plaintiff is of the opinion that the settlement conference will be far more productive if a representative of Frontier authorized to agree to non-monetary settlement terms attends in person.

ARGUMENT

Rule 16 of the Federal Rules of Civil Procedure provides the Court with the power to “order the attorneys and any unrepresented parties to appear for one or more pretrial conferences for . . . facilitating settlement.” Fed. R. Civ. P. 16(a)(5). At such a pretrial conference, the Court may “take appropriate action” on matters including “settling the case and using special procedures to assist in resolving the dispute when authorized by statute or local rule.” Fed. R. Civ. P. 16(c)(2). Further, “the court may require that a party or its representative be present or reasonably available by other means to consider possible settlement.” Fed. R. Civ. P. 16(c)(1).

This Court has previously instructed all parties that settlement conferences must “be attended by an authorized representative of each party with full and complete authority to make settlement decisions, together with trial counsel for each party.” (Notice of Settlement Conference, July 15, 2013, ECF No. 83.) Should Frontier fail to attend the upcoming settlement conference with a representative authorized to make decisions concerning Frontier’s policies, practices, and training, the parties will be unable to resolve this matter. Such a conference would waste the time and resources of the parties and the Court. Accordingly, an Order to compel Defendant Frontier to attend the settlement conference with such a representative is appropriate.

CONCLUSION

For the foregoing reasons, this Court should enter an Order compelling Defendant Frontier to attend the November 5, 2014 settlement conference with a representative who has full and complete authority to approve all terms of a settlement agreement.

Respectfully submitted,

s/Rachel E. Goodman

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SHOSHANA HEBISHI

Dated: October 27, 2014

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on October 27, 2014, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the following:

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